LIBRARY
SUPREME COURT, U. S.

Office - Supreme Court, U.S.
FILED
APR 4 1958
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM — 1957

No. 895

J. MEREDITH TATTON,

Petitioner

v.

GRANT CROLLEY, ERWIN ZABLE AND CHARLES S. BROWN, in their capacities as members of the Statutory Review Committee, Department of Agriculture of the United States

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

CONDE ANDERSON
Victoria Bank and Trust Bldg.
Victoria, Texas

AUSTIN C. WILSON
8th Floor Bank of the Southwest Bldg.
Houston 2, Texas

JOHN C. WHITE
838-842 Transportation Bldg.
Washington 6, D. C.

Of Counsel:

FULBRIGHT, CROOKER, FREEMAN, BATES & JAWORSKI
8th Floor Bank of the Southwest Bldg.
Houston 2, Texas

INDEX

	Page
Opinion Below	1
Jurisdiction	1
Question Presented	2
Statutes Involved	2
Statement	2
Reasons for Granting the Writ	4
Conclusions	13
Certificate of Service	14
Appendix A	15
Appendix B	23
Appendix C	25

CITATIONS

Cases

G. C. Conn, Ltd. v. N. L. R. B., 108 F. 2d 390	10
Daffin v. Pape, 170 F. 2d 622	10
Federal Power Commission v. Idaho Power Company, 344 U.S. 17	10
Fulford v. Forman, 245 F. 2d 145	5, 6, 11, 12
Larkin v. Roseberry, 54 F. Supp. 373 (footnote 2)	5
Lee v. Roseberry, 94 F. Supp. 324 (footnote 2)	5
Securities & Exchange Commission v. Chenery Corp, 318 U.S. 80	10
Smith Land Company v. Christensen, 148 F. 2d 184	6, 7, 9
U. S. v. Stangland, 137 F. Supp. 539; affirmed 242 F. 2d 843 (footnote 2)	5

Statutes

7 U.S.C.A., Section 1363	2
7 U.S.C.A., Section 1365	2
7 U.S.C.A., Section 1366	2
7 U.S.C.A., Section 1367 (footnote 2)	5, 7

IN THE

Supreme Court of the United States

OCTOBER TERM — 1957

No. .....

J. MEREDITH TATTON,

Petitioner

v.

GRANT CROLLEY, ERWIN ZABLE AND CHARLES S. BROWN, in their capacities as members of the Statutory Review Committee, Department of Agriculture of the United States

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

J. Meredith Tatton prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-entitled cause on December 10, 1957.

OPINION BELOW

The District Court did not write an opinion. The opinion of the Court of Appeals (Appendix A, infra, p. 15) is reported in 249 F. 2d 908. A petition for rehearing was denied without opinion.

JURISDICTION

The judgment of the Court of Appeals was entered December 10, 1957 (Appendix A, infra, p. 21). A petition for

rehearing was denied on January 9, 1958 (R. 131). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

QUESTION PRESENTED

Whether, in a statutory appeal from the amended determination of a statutory review committee as provided by the Agricultural Adjustment Act, with the facts not in dispute and all parties agreeing that the amended determination was improper and should be set aside, the District Court committed reversible error in remanding the case to the review committee with directions to reinstate its original determination instead of remanding the case to permit the review committee to have a third chance to apply regulations to undisputed facts.

STATUTES INVOLVED

The relevant portions of the Agricultural Adjustment Act of 1938, — 7 U.S.C.A., Sections 1363, 1365, 1366 and 1375(b), — are set out in Appendix B, infra (p. 23).

STATEMENT

J. Meredith Tatton, petitioner, applied to the county committee of Refugio County, Texas for a new grower cotton allotment for the crop year 1956. The county committee denied his application and he duly and timely appealed from such denial to the statutory review committee as provided by 7 U.S.C.A., Section 1363. A hearing was held before the review committee on May 18, 1956 and the committee determined that petitioner was entitled to and awarded him a cotton allotment of 1637.5 acres for the crop year 1956 (R. 17-19). The Secretary of Agriculture directed the hearing be reopened as he is authorized to do, Regu-

lations 711.29. The review committee, — the same three members sitting, — reconvened the reopened hearing on June 22, 1956 at Refugio; it did not render a decision that day but its members reconvened at Beeville, Texas on July 13, 1956 and there entered an amended determination, *completely reversing its prior decision and denying petitioner any allotment whatsoever* (R. 20-24).

In both determinations, the review committee characterized its rulings on the crucial issues:

> (1) Whether Tatton was operator of the farm in question; and
>
> (2) Whether Tatton was largely dependent upon income from the farm in question for his livelihood.

as "Conclusions" and *not as Findings of Fact.* This was true even of the amended determination (R. 23) which was prepared in all essentials by the Department of Agriculture representatives who improperly participated in the committee deliberations at Beeville on July 13, which resulted in the amended determination (R. 23-24).

It is undisputed that without the knowledge or consent of petitioner or his attorneys, representatives of the Department of Agriculture met with the review committee at Beeville on July 13; reviewed proposed findings and conclusions the Department had prepared with them; and urged upon them the views the Department had advocated before the committee at the public hearing (R. 40-52).

From the amended determination of the review committee, petitioner duly appealed in accordance with the provisions of 7 U.S.C.A., Section 1365 to the United States District Court (R. 28). The case was tried to the Court, without a jury and the Court entered its judgment reversing the amended determination of the committee and remanding the cause to the committee with directions to reinstate its original determination.

The Department of Agriculture, in the name of the committee, appealed from the District Court's judgment to the Court of Appeals for the Fifth Circuit assigning as the sole specification of error:

> "The District Court erred in directing the Review Committee to reinstate its original decision of May 18, 1956, instead of merely remanding the cause to the Review Committee for reconsideration and formulation of an independent determination in accordance with lawful administrative procedure."

At the trial of the case, the committee introduced in evidence the transcript of the hearings before the review committee on May 18, 1956 and on June 22, 1956 (R. 69). The pleadings raised the issues determinative of the matter on its merits (R. 4-9), and it was the committee's contention, before the District Court that their amended determination was supported by substantial evidence and should not be disturbed (R. 82 et seq.). In its findings and conclusions the trial court found that the facts were undisputed (R. 99). This finding was not challenged by Appellants in their brief or argument in the Court of Appeals. The trial court ordered the original determination reinstated (R. 101), thereby necessarily concluding that the original determination was correct *as a matter of law*. The only claimed error appellants urged before the Court of Appeals was that the District Court's judgment did not afford them *a third chance* to apply complex regulations to undisputed facts.

The Court of Appeals reversed the judgment of the District Court and remanded the cause as prayed for by appellants.

REASONS FOR GRANTING THE WRIT

1. This case presents the question of the correct application of the special statutory review procedure involving

review committees and appeal from decisions by such committees, provided in 7 U.S.C.A., Sections 1363, et seq., as a part of the Agricultural Adjustment Act of 1938. The decision in this case is of controlling importance in prescribing the functions of these committees and of the courts reviewing their decisions.

By the Agricultural Adjustment Act, virtually all the major agricultural commodities grown in this country are regulated and both the right of an individual farmer to grow and sell such commodities and the matter of how much of each such commodity he may grow and sell is regulated and controlled to a very high degree by a complex system of allotments and marketing quotas.

With minor variations applicable to particular commodities[1] the Secretary of Agriculture determines whether allotments or marketing quotas are necessary; fixes a national allotment or quota; and apportions it to the several states producing the commodity. A state committee in each such state apportions the state's quota or allotment to the counties within that state; then a county committee in each county apportions the county's quota or allotment to the individual farmers within the county. If the individual farmer is dissatisfied with his allotment, he may appeal to the statutory review committee for the area in which he lives. 7 U.S.C.A., Section 1363. This remedy is exclusive.[2] If the decision of the review committee is adverse to him,

[1] It is apparent that a statement of the type attempted here can only generalize and no effort is made to describe the procedure in detail.

[2] U.S.C.A., Section 1367; *Larkin* v. *Roseberry*, 74 F. Supp. 373; *Lee* v. *Roseberry*, 94 F. Supp. 324; *U. S.* v. *Stangland*, 137 F. Supp. 559, affirmed 242 F. 2d 843. The rules of law applicable to these proceedings are of considerable importance. In 1954 there were approximately 9,000 review proceedings and in 1955 about 14,000 review proceedings. Note 20 to Fulford v. Forman,

the farmer may appeal to the courts. 7 U.S.C.A., Section 1365. The trial is not *de novo* and the review committee's findings of fact are conclusive if supported by evidence. 7 U.S.C.A., Section 1366.

In the case at bar, respondents' appeal to the Court of Appeals was limited to a single specification of error, namely:

> "The District Court erred in directing the Review Committee to reinstate its original decision of May 18, 1956, instead of merely remanding the cause to the Review Committee for reconsideration and formulation of an independent determination in accordance with lawful administrative procedure."

The District Court found that the facts were undisputed and remanded the cause with instructions to reinstate its original determination. This finding was not attacked by respondents; but the direction to reinstate the original determination was bitterly contested.

The sole basis for respondents' appeal was their contention that it was error for the District Court to deny them a *third chance* to apply the pertinent regulations to undisputed facts. We do not believe that the applicable statutes, general rules of law, or the decisions in *Fulford* v. *Forman*[3] and *Smith Land Company* v. *Christensen*,[4] entitle the committee to such an opportunity; yet, the Court of Appeals remanded the case to the review committee, *without directions of any kind*, to give the committee this third chance. This case requires the definition of the respective functions of review committee and court in these statutory proceedings. It is our contention that the application of regulations to undisputed facts presents questions of law which the

---

[3] 245 F. 2d 145.
[4] 148 F. 2d 184.

court properly may pass upon, and that there is no rule of law which requires these "part time administrators" be given the exclusive right to apply complex regulations to undisputed facts.

2. The Court of Appeals has adopted, in this case, a view of the functions of review committees at variance with its own decision in *Fulford* v. *Forman*, cited above, and a view of the function of the District Court in statutory appeals from the decision of review committees at variance with the applicable statute, 7 U.S.C.A., Section 1366, and the decision of the 10th Circuit in *Smith Land Co.* v. *Christensen*.

The Court of Appeals in its opinion (R. 124) treated the determination of whether petitioner was the "operator" of the farm in question and whether petitioner was "largely dependent on income from the farm for his livelihood" as if these matters were questions of fact. The statements in the opinion (R. 124) would indicate that the Court of Appeals had reviewed the transcripts of the proceedings before the review committee, which were introduced in evidence by respondents in the trial court (R. 69) and had concluded from such review that there were fact issues for the review committee to pass upon. This simply is not the case for the transcripts of the proceedings before the review committee were not sent to the Court of Appeals and hence could not have been considered by that Court.[5]

We are therefore presented with a situation in which the District Court with the full record before it concluded

[5] Although introduced in evidence in the District Court (R. 69) and designated to be contained in the record on appeal (R. 1, — Item 7; all exhibits listed in numerical order), these transcripts were not forwarded to the Court of Appeals. See the two letters in Appendix C. Until receipt of the Clerk's letter, the undersigned attorneys were under the impression that these transcripts had been forwarded to the Clerk and, in fact, we directed the Court's attention to these transcripts in our brief.

that the facts were undisputed (R. 99). Respondents have not attacked this finding. That should, by every standard of appellate review with which we are familiar, have concluded the matter of fact issues and the Court of Appeals should have considered the case as it really was, — a case involving the application of regulations to undisputed facts. Instead, the Court of Appeals presumed to find some fact issues, — how, where and why we do not know, — and remanded the case to the review committee to pass upon them.

This action is all the more surprising for respondents very severely restricted their appeal and made it plain in their brief that they did not want to "find" facts, but wanted to "apply . . . standards" to facts. In short, respondents had no fault to find with the trial court's conclusion that the facts were undisputed; their complaint was that the trial court had deprived them of a further opportunity to apply regulations to undisputed facts. Two short quotations from respondents' brief will demonstrate this beyond question:

> "Its (the committee's) function is to apply the statutory[9] standards to the facts adduced at the entire hearing . . ."
>
> "If an order is valid only as *a determination of policy, or judgment, which the agency alone is authorized to make* and which it has not made, a judicial judgment cannot be made to do service for an administrative judgment."

Respondents' sole complaint with the trial court's judgment was that it deprived them of the opportunity to sit *as policy makers.*

We submit that this claim by respondents of the right to make the ultimate application of regulations to undis-

---

[9] In this case, the reference should be to regulations, not statutes.

puted facts and this attempt to constitute themselves policy makers is at variance with: (1) the applicable statute; (2) the applicable general rules of law; and (3) the express decisions on the point.

The applicable statute, 7 U.S.C.A., Section 1366, prescribes that ". . . review by the court shall be limited to questions of law, and the findings of fact of the review committee, if supported by evidence shall be conclusive." The statute gives the court three alternatives: (1) to affirm, —which no one contends should have been done here; (2) *to remand "with direction . . . to make such determination as the court shall determine to be in accordance with law," —which is exactly what the trial court did in this case;* or (3) to remand with direction "to take such further proceedings as, in the court's opinion, the law requires," —which is the only alternative to what the trial court did.

The first case to reach any of the Courts of Appeals involving the statute was *Smith Land Company* v. *Christensen*, 148 F. 2d 184, in which the Court of Appeals for the Tenth Circuit clearly recognized that the choices given the review committee were either to affirm or to remand "*with directions.*"

Before discussing further authorities we would point out that in both the original determination and the amended determination the rulings of the committee on the crucial issues *were not characterized as "findings of fact" but as "conclusions"* (R. 19, 23-24). Insofar as the question of whether or not petitioner was "operator" is concerned, the matter turns on the complex definition of the term found in Regulations 722.712(k), which must be read in conjunction with the definition of "farm" found in Regulations 722.712(l). With respect to petitioner's being largely dependent on the farm for his livelihood, the problem the committee had is apparent from the record, for in the

"Conclusions" of the amended determination (R. 23-27) respondents undertake to "interpret" the term livelihood. We think it manifest from the record that the problem was not facts or fact issues, but was the application of complex regulations to undisputed facts. This is not a matter on which the court is concluded or bound by the committee's action. Application of statutes or regulations having the force and effect of statutes to undisputed facts is a proper function for the court. The Court of Appeals for the Fifth Circuit has so held in *Daffin* v. *Pape*,[7] 170 F. 2d 622; and so has the Court of Appeals for the Seventh Circuit in *G. C. Conn, Ltd.* v. *N.L.R.B.*,[8] 108 F. 2d 390. We respectfully submit that no reasonable distinction can be advanced to justify *the same court* holding that whether or not, on undisputed facts, a party is a "member of the crew" or an "employee" within a Federal statute is a question of law for the Court but whether or not one is an "operator" of a farm within the Secretary of Agriculture's regulations is a question of fact for an administrative tribunal.

In support of its decision in this case the Court of Appeals cited *Securities and Exchange Commission* v. *Chenery Corporation*[9] and *Federal Power Commission* v. *Idaho Power Company*.[10] For the Court of Appeals for the Fifth Circuit to compare a statutory review committee to one of the great Federal agencies and to apply the same rules of law to both is indeed remarkable. Less than a year ago

[7] Whether, under undisputed facts, plaintiff was a "member of the crew" or an "employee" within the meaning of those terms as used in the Longshoremen and Harbor Workers' Act.

[8] Whether acts amounted to a "strike" and the participants were "striking employees" under the National Labor Relations Act.

[9] 318 U.S. 80.

[10] 344 U.S. 17.

this same Court of Appeals with two of the same judges (Hutcheson, C. J., and Rives, J.) sitting, decided *Fulford v. Forman*.[11] In the *Fulford* case it was contended that a review committee had jurisdiction to consider the allocation of the state acreage reserve as it affected the individual farmer's allotment. The Court of Appeals, characterizing these committeemen as "part-time administrators," held that no such power or discretion was vested in them. In disqualifying the review committees from any policy-making role, the Court pointed out: (1) committeemen were "persons of unknown experience, training and qualifications"; (2) they were "neither screened nor approved" by Congress; (3) they were not provided with an adequate staff; (4) they were not appropriated money for research, collection, gathering and assimilation of facts; (5) in Texas alone, there are 51 review committees, thereby making possible, on any policy decision, 51 separate results; and (6) they are "free from traditional Governmental responsibility."

Each of these factors operates to distinguish any review committee from the S.E.C. or the F.P.C. which are great Federal agencies, charged, as is the Secretary of Agriculture himself, with implementing and giving effect to more or less skeletal legislation declaring a general Congressional purpose to regulate whole segments of our economy. Each of these agencies is charged by Congress with policy-making functions; issues rules and regulations having the force and effect of law; and determines whether or not certain matters are in the public interest or are a matter of public convenience and necessity. To apply the same rules of law respecting finality of decisions to review committees that apply to the S.E.C. and the F.P.C., — as the Court

[11] 245 F. 2d 145.

of Appeals did in this case, — is, we submit, a complete departure from its own holding in the *Fulford* case.

One further observation need be made. It is just as undesirable and just as damaging to the proper administration of the Agricultural Adjustment Act to have 51 review committees each adopting and applying its own interpretation of "operator" or "livelihood", — which the Court of Appeals is perfectly willing to permit, — as it is to have 51 different views as to how the state acreage reserve should be distributed, — which the same Court of Appeals said was a result Congress clearly did not intend.

3. The Court of Appeals has reversed and remanded this cause for claimed reasons not specified as error, nor briefed nor argued before it. To do so, it had to disregard an express finding by the District Court that the facts were undisputed and to conclude that the District Court's decision on undisputed facts that the original determination should be reinstated was incorrect as a matter of law when none of these matters were urged by appellants or considered by the Court, and as a matter of fact could not have been.

In the interest of brevity, a restatement of many of the facts and authorities cited above will be avoided. It will suffice to say:

> (1) The trial court found the facts of this case to be undisputed (R. 99); no complaint was made by respondents respecting this finding; it was not assigned as error, nor briefed nor argued; the transcripts of the proceedings before the review committee were not forwarded to the Court of Appeals so it could not possibly have reviewed the record before the review committee; yet, notwithstanding all these things, the Court of Appeals purported to find the existence of fact issues and remand the case to the review com-

mittee for further action by it without directions to guide it.

(2) It is implicit in the trial court's judgment directing the review committee to reinstate its original determination that the trial court concluded that the original determination was "in accordance with law" as contemplated by 7 U.S.C.A., Section 1366. Respondents did not assign, nor brief nor argue the questions of whether or not on the evidence before the trial court, under the applicable regulations, petitioner was the operator of the farm in question or was largely dependent upon income therefrom for his livelihood. Nevertheless, the Court of Appeals characterized both of these issues as "fact" issues and remanded the cause to the review committee for further action by it.

CONCLUSION

It is submitted that the decision below is erroneous and is in conflict with the controlling statute, applicable general rules of law, and the previously decided cases governing appeals from the decisions of the statutory review committees under the Agricultural Adjustment act. It is important both to the Department of Agriculture and to the farmers regulated by it that the questions presented by this case be resolved by this Court. It is submitted, therefore, that this petition for writ of certiorari should be granted.

Respectfully,

CONDE ANDERSON
Victoria Bank and Trust Bldg
Victoria, Texas

AUSTIN C. WILSON
8th Floor Bank of the Southwest Bldg.
Houston 2, Texas

JOHN C. WHITE
838-842 Transportation Bldg.
Washington 6, D. C.

Attorneys for Petitioner
J. Meredith Tatton

Of Counsel:

FULBRIGHT, CROOKER, FREEMAN, BATES & JAWORSKI
8th Floor Bank of the Southwest Bldg.
Houston 2, Texas

CERTIFICATE OF SERVICE

Copies of the above and foregoing Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit have been mailed to Mr. William B. Butler, United States Attorney, Office of the United States Attorney, Post Office Building, Houston 2, Texas, Attorney for respondents, this ..... day of April, 1958.

.....

AUSTIN C. WILSON
Attorneys for Petitioner
J. Meredith Tatton

APPENDIX A

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 16554

GRANT CLOLLEY, ERWIN ZABEL AND CHARLES S. BROWN, in their capacities as members of the Statutory Review Committee, Department of Agriculture of the United States,

Appellants,

versus

J. MEREDITH TATTON,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS.

(December 10, 1957.)

Before HUTCHESON, Chief Judge, and RIVES and JONES, Circuit Judges.

RIVES, Circuit Judge: Appellee sought judicial review[1] of the amended determination of the Statutory Review Com-

---

[1] Under 7 U.S.C.A. §1365.

"If the farmer is dissatisfied with the determination of the review committee, he may, within fifteen days after a notice of

mittee for Refugio County, Texas, denying appelee a cotton acreage allotment for 1956.[2]

Appellee agrees that appellants' brief presents an adequate history of the case as follows:

> "Appellee's wife owns a large tract of land called Salt Creek Ranch, located in Refugio and Aransas Counties, Texas. It is undisputed that prior to 1956 no one had been planting cotton on this land. Accordingly, under the provisions of 7 C.F.R. §722.717(e)(3)(ii), Appellee early in 1956 filed with the Agricultural Stabilization and Conservation Committee an application for an allotment for a new cotton farm. The county committe denied his application, whereupon Appellee appealed to the Review Committee for Refugio County, an administrative tribunal composed of three local farmers appointed by the Secretary of Agriculture under 7 U.S.C. §1363 to review and pass upon administrative appeals from the determinations of the county committee.
>
> "After the first hearing on May 18, 1956, the Review Committee found that Appellee met the necessary qualifications and granted him a cotton acreage allotment

such determination is mailed to him by registered mail, file a bill in equity against the review committee as defendant in the United States district court, or institute proceedings for review in any court of record of the State having general jurisdiction, sitting in the county or the district in which his farm is located, for the purpose of obtaining a review of such determination. Bond shall be given in an amount and with surety satisfactory to the court to secure the United States for the costs of the proceedings. The bill of complaint in such proceeding may be served by delivering a copy thereof to any one of the members of the review committee. Thereupon the review committee shall certify and file in the court a transcript of the record upon which the determination complained of was made, together with its findings of fact."

[2] On inquiry from the district court as to whether the case is moot, counsel replied in the negative because the history of the 1956 allotment would affect allotments for future years.

of 1697.5 acres for the year 1956. Thereafter, on motion of the Secretary of Agriculture under 7 C.F.R. §711.29, the Review Committee reopened the hearing. After the second hearing on June 22, 1956, the Review Committee met on July 13, 1956, to deliberate and reach a decision. Certain agents of the Department of Agriculture were present at this meeting and discussed the case with the committeemen, following which they were excused, while the Committee reached a decision in private. Neither Appellee nor his attorneys had been notified of this meeting. After this conference, the Committee set aside its first determination and entered an amended determination denying Appellee any allotment at all on the grounds that he was not the 'operator' of the farm on which an allotment was sought and that he was not largely dependent on income from the farm for his livelihood.

"Appellee thereupon filed suit in the District Court under 7 U.S.C. §§1365 for a judicial review of this amended determination. After hearing the trial court entered judgment vacating the amended determination of the Review Committee on the ground that the manner in which it was reached was basically unfair to Appellee. The Court then remanded the cause to the Review Committee with directions for it to reinstate its original findings, conclusions and determination of May 18, 1956."

Appellants do not question the correctness of the district court's decision that the Review Committee's amended findings, conclusions and determination of July 13, 1956 were reached in an unfair manner. Their sole specification of error is that:

"The District Court erred in directing the Review Committee to reinstate its original decision of May 18, 1956, instead of merely remanding the cause to the Review Committee for reconsideration and formulation

of an independent determination in accordance with lawful administrative procedure."

There has been, and can be, no question as to the validity of the administrative action in reopening the hearing.[3] Nor did the appellee contend that there was anything unfair in the taking of testimony at or the conduct of the second administrative hearing of June 22, 1956. The improper conduct occurred when members of the Review Committee met on July 15, 1956 and discussed the case with certain agents of the Department of Agriculture in the absence of and without notice to the appellee or his attorneys. Because of that misconduct, it is not questioned that the district court properly vacated the amended determination which denied appellee a cotton acreage allotment for 1956. It by no means follows, however, that the Committee should be directed to reinstate its original findings, conclusions and determination.

At each administrative hearing the disputed issues have been whether the appellee was the "operator" of the farm as defined by 7 C.F.R. §722.712(k), that is, the person in charge of the supervision and conduct of the farming operations, and whether he was "largely dependent on income from the farm for his livelihood" so as to qualify for a cotton acreage allotment for a new farm under 7 C.F.R.

---

[3] 7 C.F.R. §711.29 authorizing the Review Committee to reopen hearings reads as follows:

"7 C.F.R. Section 711.29. Reopening hearing. The review committee (a) on its own motion, or upon due application therefor, may, within fifteen days from the date of mailing to the applicant of a copy of the determination of the review committee, reopen the hearing for the purpose of taking additional evidence or of adding any relevant matter or document, and (b) upon application by the Secretary of Agriculture or on his behalf by the Assistant Administrator for Production, Production and Marketing Administration, made for any purpose within a period of sixty days from the date of mailing to the applicant of a copy of the determination of the review committee, shall reopen the hearing."

§722.717(c)(3)(ii). The terms of the written leases between appellee and his lessees offered in evidence in the first hearing before the Review Committee would support, though they might not require, an administrative conclusion that appellee was not the operator, the real supervisor, of the farm. Additional evidence to support that conclusion was offered on the second hearing before the Review Committee, and there was also substantial evidence that appellee was not "largely dependent on income from the farm for his livelihood."

The duty and power of making findings of fact are entrusted to the Review Committee, and, if supported by substantial evidence on the record as a whole, its findings are conclusive. The review by the district court is limited to questions of law. 7 U.S.C. §1366.[4] Appellee insists that

[4] "§1366. *Court review*

"The review by the court shall be limited to questions of law, and the findings of fact by the review committee, if supported by evidence shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the review committee, the court may direct such additional evidence to be taken before the review committee in such manner and upon such terms and conditions as to the court may seem proper. The review committee may modify its findings of fact or its determination by reason of the additional evidence so taken, and it shall file with the court such modified findings or determination, which findings of fact shall be conclusive. At the earliest convenient time, the court, in term time or vacation, shall hear and determine the case upon the original record of the hearing before the review committee, and upon such record as supplemented if supplemented, by further hearing before the review committee pursuant to direction of the court. The court shall affirm the review committee's determination, or modified determination, if the court determines that the same is in accordance with law. If the court determines that such determination or modified determination is not in accordance with law, the court shall remand the proceeding to the review committee with direction either to make such determination as the court shall determine to be in accordance with law or to take such further proceedings as, in the court's opinion, the law requires." 7 U.S.C.A.

the district court simply remanded the proceeding "with * * * direction to make such determination as the court shall determine to be in accordance with law" as authorized by that section. Clearly, however, the quoted phrase, when construed in connection with the other parts of the section, vested no original fact finding functions in the court. In directing the Review Committee to reinstate its original findings, conclusions and determination, the district court intruded upon the domain which had been exclusively entrusted to the administrative agency. Compare *Securities and Exchange Commission* v. *Chenery Corporation*, 318 U.S. 80, 88; *Federal Power Commission* v. *Idaho Power Company*, 344 U.S. 17, 20, 21.

That part of the judgment of the district court vacating the amended findings of fact, conclusions and determination made by the Review Committee on July 13, 1956 is not attacked and is affirmed, but that part of said judgment remanding the proceeding to the Review Committee with directions to reinstate its original findings, conclusions and determination of May 18, 1956 is reversed, and, instead, the district court is directed to remand the proceeding to the Review Committee for that Committee's reconsideration of the reopened hearing in connection with the evidence introduced at the hearing of June 22, 1956, and any additional evidence that may be properly offered, and for the formulation by the Review Committee of its independent determination in accordance with lawful administrative procedure.[5]

AFFIRMED IN PART, AND IN PART REVERSED AND REMANDED WITH DIRECTIONS.

---

[5] The terms of two members of the Review Committee who took part in the improper discussion have expired. Upon oral argument, counsel for the appellants assured the Court that in the event of a remand none of the members of the original Review Committee would participate in the reconsideration of the proceeding.

JUDGMENT

Extract from the Minutes of December 10, 1957.

GRANT CROLLEY, ERWIN ZABEL AND CHARLES S. BROWN, in their capacities as members of the Statutory Review Committee, Department of Agriculture of the United States,

No. 16,554

versus

J. MEREDITH TATTON.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that that part of the judgment of the said District Court in this cause vacating the amended findings of fact, conclusions and determination made by the Review Committee on July 13, 1956 be, and the same is hereby, affirmed; but that part part of said judgment remanding the proceeding to the Review Committee with directions to reinstate its original findings, conclusions and determination of May 18, 1956 be, and it is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court with directions to remand the proceeding to the Review Committee for that Committee's reconsideration of the reopened hearing in connection with the evidence introduced at the hearing of June 22, 1956, and any additional evidence that may be properly offered, and for the formulation by the Review Committee of its independent determination in accordance with lawful administrative procedure.

Extract from the Minutes of January 9, 1958

GRANT CROLLEY, ERWIN ZABEL AND CHARLES S. BROWN, in their capacities as members of the Statutory Review Committee, Department of Agriculture of the United States,

No. 16,554

versus

J. MEREDITH TATTON.

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

APPENDIX B

Tit. 7 U.S.C.A., Section 1363.

Any farmer who is dissatisfied with his farm marketing quota may, within fifteen days after mailing to him of notice as provided in section 1362 of this title, have such quota reviewed by a local review committee composed of three farmers from the same or nearby counties appointed by the Secretary. Such committee shall not include any member of the local committee which determined the farm acreage allotment, the normal yield, or the farm marketing quota for such farm. Unless application for review is made within such period, the original determination of the farm marketing quota shall be final.

Tit. 7 U.S.C.A., Section 1365.

If the farmer is dissatisfied with the determination of the review committee, he may, within fifteen days after a notice of such determination is mailed to him by registered mail, file a bill in equity against the review committee as defendant in the United States district court, or institute proceedings for review in any court of record of the State having general jurisdiction, sitting in the county or the district in which his farm is located, for the purpose of obtaining a review of such determination. Bond shall be given in an amount and with surety satisfactory to the court to secure the United States for the costs of the proceeding. The bill of complaint in such proceeding may be served by delivering a copy thereof to any one of the members of the review committee. Thereupon the review committee shall certify and file in the court a transcript of the record upon which the determination complained of was made, together with its findings of fact.

Extract from the Minutes of January 9, 1958

GRANT CROLLEY, ERWIN ZABEL AND CHARLES S. BROWN, in their capacities as members of the Statutory Review Committee, Department of Agriculture of the United States,

No. 16,554

versus

J. MEREDITH TATTON.

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

APPENDIX B

Tit. 7 U.S.C.A., Section 1363.

Any farmer who is dissatisfied with his farm marketing quota may, within fifteen days after mailing to him of notice as provided in section 1362 of this title, have such quota reviewed by a local review committee composed of three farmers from the same or nearby counties appointed by the Secretary. Such committee shall not include any member of the local committee which determined the farm acreage allotment, the normal yield, or the farm marketing quota for such farm. Unless application for review is made within such period, the original determination of the farm marketing quota shall be final.

Tit. 7 U.S.C.A., Section 1365.

If the farmer is dissatisfied with the determination of the review committee, he may, within fifteen days after a notice of such determination is mailed to him by registered mail, file a bill in equity against the review committee as defendant in the United States district court, or institute proceedings for review in any court of record of the State having general jurisdiction, sitting in the county or the district in which his farm is located, for the purpose of obtaining a review of such determination. Bond shall be given in an amount and with surety satisfactory to the court to secure the United States for the costs of the proceeding. The bill of complaint in such proceeding may be served by delivering a copy thereof to any one of the members of the review committee. Thereupon the review committee shall certify and file in the court a transcript of the record upon which the determination complained of was made, together with its findings of fact.

Tit. 7, U.S.C.A., Section 1366.

The review by the court shall be limited to questions of law, and the findings of fact by the review committee, if supported by evidence shall be conclusive. If application is made to the court for leave to adduce additional evidence, and it is shown to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the hearing before the review committee, the court may direct such additional evidence to be taken before the review committee in such manner and upon such terms and conditions as to the court may seem proper. The review committee may modify its findings of fact or its determination by reason of the additional evidence so taken, and it shall file with the court such modified findings or determination, which findings of fact shall be conclusive. At the earliest convenient time, the court, in term time or vacation, shall hear and determine the case upon the original record of the hearing before the review committee, and upon such record as supplemented if supplemented, by further hearing before the review committee pursuant to direction of the court. The court shall affirm the review committee's determination, or modified determination, if the court determines that the same is in accordance with law. If the court determines that such determination or modified determination is not in accordance with law, the court shall remand the proceeding to the review committee with direction either to make such determination as the court shall determine to be in accordance with law or to take such further proceedings as, in the court's opinion, the law requires.

Tit. 7, U.S.C.A., Section 1375(b).

(b) The Secretary shall prescribe such regulations as are necessary for the enforcement of this chapter.

APPENDIX C

FULBRIGHT, CROOKER, FREEMAN, BATES & JAWORSKI

ATTORNEYS AT LAW

Bank of the Southwest Building
HOUSTON 2, TEXAS

February 14, 1958

RE: No. 16,554 — Grant Crolley, et al, Appellants, vs. J. Meredith Tatton, Appellee, In the Court of Appeals for the Fifth Circuit

Hon. Edward W. Wadsworth, Clerk
United States Court of Appeals
New Orleans, Louisiana

Dear Sir:

We are in the process of preparing a petition for a writ of certiorari in the above case.

This letter constitutes our request that you certify to the Clerk of the United States Supreme Court the record in the case including the transcript of the record; the opinion of the Court; appellee's petition for rehearing; and the Court's order thereon.

I am under the impression that the record in the Court of Appeals includes the two transcripts of proceedings before the Review Committee (defendant's Exhibits Nos. 1 and 2 in the trial court) with respect to which please see page 69 of the transcript of record. However, I do not find listed in the designation of the contents of the record any

order of the trial court to forward these originals; they are not set out in the transcript of the record; but are included under Item 7 in the designation.

In the event that these have been filed as a part of the record in the Court of Appeals, please include them in the certified record to the Clerk of the Supreme Court.

In the event any further action on my part is needed or anything needs to be done by me in connection with the preparation and forwarding of this record, please advise me promptly.

With kindest regards, I am

Very truly yours,

Austin Wilson

ACW/jb

cc:
Hon. Gordon Kroll,
Assistant United States Attorney
Post Office Building
Houston 2, Texas
(attorney for appellants Grant Crolley, et al)

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

OFFICE OF THE CLERK

Edward W. Wadsworth
Clerk

Post Office Box 23
New Orleans 6, La.

February 20, 1958

Mr. Austin Wilson,
Attorney at Law,
Bank of the Southwest Bldg.,
Houston 2, Tex.

Re: No. 16554, Grant Crolley, Et Al, vs.
J. Meredith Tatton.

Dear Sir:

As requested in your letter of February 14th, I enclose a certified transcript of record in the above case to which is attached the proceedings had in this Court.

Under separate cover I am forwarding to you ten (10) additional copies of the uncertified record and ten (10) copies of the printed petition for rehearing.

Also enclosed is a copy of the judgment and opinion of this Court which should be printed by you as an appendix to your Petition for Writ of Certiorari, as provided by the rules of the Supreme Court, together with my statement in the amount of $4.40.

My records reveal that there were no original exhibits transmitted to this Court along with the transcript of

record as certified by the Clerk of the District Court. Therefore, the exhibits mentioned in your letter are not in my possession.

Very truly yours,

/s/ Ed. W. Wadsworth
Edward W. Wadsworth
Clerk

cc:

Mr. Gordon Kroll, Asst. U. S. Atty., Houston, Tex.

LIBRARY
SUPREME COURT, U. S.

Office - Supreme Court, U.S.
FILED
MAY 15 1958
JOHN T. FEY, Clerk

No. 895

In the Supreme Court of the United States

October Term, 1957

J. MEREDITH TATTON, PETITIONER

v.

GRANT CROLLEY, ERWIN ZABEL and CHARLES S. BROWN, in their Capacities as Members of the Statutory Review Committee, Department of Agriculture of the United States

---

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

BRIEF FOR THE RESPONDENTS IN OPPOSITION

J. LEE RANKIN,
Solicitor General,

VICTOR R. HANSEN,
Assistant Attorney General,
Department of Justice,
Washington 25, D. C.

NEIL BROOKS,
Assistant General Counsel,

DONALD A. CAMPBELL,
Attorney,
Department of Agriculture,
Washington 25, D. C.

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Argument	3
Conclusion	7

CITATIONS

Cases:

C. G. Conn, Limited v. *National Labor Relations Board*, 108 F. 2d 390	6-7
Daffin v. *Pape*, 170 F. 2d 622	6
Federal Communications Comm'n v. *Broadcasting Co.*, 309 U.S. 134	6
Federal Power Commission v. *Idaho Power Co.*, 344 U. S. 17	6
Federal Radio Comm'n v. *Nelson Bros. Co.*, 289 U. S. 266	6
Federal Security Adm'r. v. *Quaker Oats Co.*, 318 U.S. 218	6
Federal Trade Commission v. *Carter Products*, 346 U. S. 327	6
Federal Trade Commission v. *Morton Salt Co.*, 344 U. S. 37	6
Ford Motor Co. v. *Labor Board*, 305 U. S. 364	6
Fulford v. *Forman*, 245 F.2d 145	6
Securities and Exchange Commission v. *Chenery Corporation*, 318 U.S. 80	5
Smith Land Company v. *Christensen*, 148 F. 2d 184	6

Statute:

Agricultural Adjustment Act of 1938, 7 U.S.C. 1363-1366	2, 4, 6

In the Supreme Court of the United States

October Term, 1957

No. 895

J. MEREDITH TATTON, PETITIONER

v.

GRANT CROLLEY, ERWIN ZABEL and CHARLES S. BROWN, in their Capacities as Members of the Statutory Review Committee, Department of Agriculture of the United States

---

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit (Pet. 15-20) is reported in 249 F. 2d 908. The United States District Court for the Southern District of Texas did not file an opinion.

JURISDICTION

The judgment of the Court of Appeals was entered on December 10, 1957. A petition for rehearing was

denied on January 9, 1958 (Pet. 22), and the petition for certiorari was filed on April 4, 1958. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

A statutory review committee established under the Agricultural Adjustment Act of 1938 determined, originally, that petitioner was entitled to a cotton acreage allotment for the 1956 crop of cotton. However, after additional evidence was received at a properly reopened hearing, the review committee determined that petitioner was not entitled to an allotment. The procedure at the second hearing subsequent to the receipt of further evidence was defective. The issue is whether, in these circumstances, the Court of Appeals properly held that the case should be remanded to the review committee for further administrative proceedings.

STATUTE INVOLVED

The relevant provisions of the Agricultural Adjustment Act of 1938, as amended, are set forth in Appendix B to the petition (Pet. 23-24).

STATEMENT

This action was instituted before the Review Committee for Refugio County, Texas, to review the determination by the County Committee for Refugio County that petitioner was not entitled to a cotton acreage allotment for the 1956 crop year (R. 20-24). On the basis of the evidence adduced at the original

administrative hearing, the review committee determined that petitioner was entitled to a cotton acreage allotment (R. 17-19). The hearing was, however, admittedly properly reopened (Pet. 2), and additional evidence was received at the reopened hearing (Pet. 2-3). On the basis of the evidence adduced at the original hearing and the reopened hearing, the review committee issued an amended determination that petitioner was not entitled to a 1956 cotton acreage allotment (R. 20-24).

Because of procedural irregularities occurring after the receipt of all of the evidence at the reopened hearing, the District Court held that the amended determination was invalid, and directed the review committee to reinstate its original determination (R. 99-101). The Government appealed to the Court of Appeals solely on the ground that the District Court erred in directing the review committee to reinstate its original decision instead of remanding the cause for reconsideration and formulation of an independent determination by the review committee (R. 123). The Court of Appeals unanimously sustained the Government's contention, and ordered a remand to the review committee (Pet. 15-21).

ARGUMENT

The narrow issue presented by petitioner relates to the action to be taken in the event that a proceeding before a review committee established under the Agricultural Adjustment Act of 1938 is reopened, additional evidence is received, and procedural irregularities subsequent to the introduction of the

evidence at the reopened hearing invalidate the committee's determination on rehearing. It is plain, we submit, that the Court of Appeals properly held that in those circumstances the case must be remanded to the review committee to arrive at a proper administrative determination.[1]

The review committee is vested with the administrative authority to determine—on the basis of the evidence adduced at a hearing—petitioner's farm acreage allotment and farm marketing quota (7 U. S. C. 1363-1366); and on judicial review the "court shall be limited to questions of law, and the findings of fact by the review committee, if supported by evidence shall be conclusive" (7 U. S. C. 1366). The issues before the review committee as to petitioner's right to an allotment are fundamentally factual in character, *viz.*, whether petitioner is the "operator" of the farm and whether he is largely dependent on income from the farm for a livelihood (R. 20-24). The petitioner contends (Pet. 4, 6, 7, 8, 10, 12) that the relevant facts are undisputed, and reliance is placed, in this respect, on the finding by the District Court that the "facts of this case are undisputed and are as set out in the above narrative statement of the case" (R. 99). But the facts set out by the District Court in the narrative statement

[1] The contention (Pet. 12) that the Court of Appeals remanded the cause for "reasons not specified as error, nor briefed nor argued before it" is erroneous. The Court of Appeals remanded the case for the identical reason advanced in the Government's brief, *viz.*, that the District Court usurped the administrative function of the review committee (Pet. 20).

of the case relate to the facts with respect to the procedural error which occurred after the evidence was received at the reopened hearing—and not with respect to the substantive issues before the review committee.

Evidence on these issues was received by the review committee both at the original hearing and at the reopened hearing. The initial determination by the review committee was therefore based on only part of the administrative record, and until the review committee renders its decision based on all of the evidence the administrative process is not complete. The determination made by the review committee following the reopened hearing was admittedly invalid because of procedural irregularities which occurred after the reopened hearing was closed and the Court of Appeals therefore properly directed that the case be remanded to the review committee to complete the administrative process. It is familiar doctrine that, "where the correctness of the lower court's decision depends upon a determination of fact which only a jury could make but which has not been made, the appellate court cannot take the place of the jury. Like considerations govern review of administrative orders. If an order is valid only as a determination of policy or judgment which the agency alone is authorized to make and which it has not made, a judicial judgment cannot be made to do service for an administrative judgment." *Securities and Exchange Commission* v. *Chenery Corporation*, 318 U. S. 80, 88.

The jurisdiction of a reviewing court under the Agricultural Adjustment Act of 1938 is similar to the jurisdiction of a reviewing court under the Federal Power Act, and it has been held under the Federal Power Act that the power to "affirm, modify, or set aside" an administrative order does not confer on the court "power to exercise an essentially administrative function." *Federal Power Commission* v. *Idaho Power Co.*, 344 U. S. 17, 21. The "function of the reviewing court ends when an error of law is laid bare. At that point the matter once more goes to the Commission for reconsideration." *Id.* at 20. See also *Federal Trade Commission* v. *Carter Products*, 346 U. S. 327; *Federal Trade Commission* v. *Morton Salt Co.*, 334 U. S. 37, 54-55; *Federal Security Adm'r.* v. *Quaker Oats Co.*, 318 U. S. 218, 227-228; *Federal Communications Comm'n* v. *Broadcasting Co.*, 309 U.S. 134, 144-146; *Ford Motor Co.* v. *Labor Board*, 305 U. S. 364, 373-376; *Federal Radio Comm'n* v. *Nelson Bros. Co.*, 289 U. S. 266, 276-278.

The alleged conflict (Pet. 7, 9) with *Smith Land Company v. Christensen*, 148 F. 2d 184 (C. A. 10), is nonexistent. In the *Smith Land Company* case, the court remanded the proceeding to the review committee to hear newly discovered evidence, and the court affirmed the subsequent administrative determination based on the additional evidence (148 F. 2d at 185-186). Hence the court in that case did not attempt to usurp the administrative function. Also in *Fulford* v. *Forman*, 245 F. 2d 145 (C. A. 5), *Daffin* v. *Pope*, 170 F. 2d 622 (C. A. 5), and *C. G.*

Conn, Limited v. *National Labor Relations Board*, 108 F. 2d 390 (C. A. 7), upon which petitioner relies (Pet. 7, 10), no issue was presented as to the procedure to be followed where, as here, additional evidence was presented upon the reopening of an administrative proceeding and procedural irregularity invalidated the administrative determination thereupon made.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

J. LEE RANKIN,
Solicitor General.

VICTOR R. HANSEN,
Assistant Attorney General.

NEIL BROOKS,
Assistant General Counsel,

DONALD A. CAMPBELL,
Attorney,
Department of Agriculture.

MAY 1958.

☆ U. S. GOVERNMENT PRINTING OFFICE 1958 465114 1452